

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PATRICK EALY, #2107526

§

VS.

§

CIVIL ACTION NO. 2:19cv329

ALLYSON MITCHELL, ET AL.

§

ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Patrick Ealy, an inmate currently confined at the Telford Unit within the Texas Department of Criminal Justice, is proceeding *pro se* and *in forma pauperis* in the above styled and numbered civil rights lawsuit. The complaint was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On December 30, 2020, Judge Payne issued a Report, (Dkt. #8), recommending that Plaintiff's case be dismissed, with prejudice, as malicious and duplicative. A copy of this Report was sent to Plaintiff at his address, with an acknowledgment card. The docket reflects that Plaintiff received a copy of this Report on January 11, 2021, (Dkt. #9). While Plaintiff has subsequently filed a letter to the Court, (Dkt. #10), to date, no substantive objections to the Report have been filed.

Because objections to the Report have not been filed, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).


The Court has reviewed the pleadings and the Report of the Magistrate Judge *de novo* despite the waiver. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (holding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #8), is **ADOPTED** as the opinion of the Court. Further, it is

ORDERED that the above-styled civil action is **DISMISSED**, with prejudice, as malicious. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED** as **MOOT**.

So ORDERED and SIGNED this 1st day of February, 2021.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE